



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1995

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR95-102

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 30018.

Travis County (the "county") has received a request for information relating to the arrest of Ms. Nona Byington on February 4, 1994. Specifically, the requestor seeks "a full and complete copy of the Affidavit for Search and Arrest Warrant, the Search and Arrest Warrant, the Return (if any), and the Complaint (if any) that relate to the February 3, 1994 warrant." You advise us that two warrants fall within the ambit of this request. One of the warrants was executed; it and the affidavit used to secure it are available for public view. The other warrant, however, was withdrawn before its execution. You seek to withhold this warrant and the affidavit used to secure it from required public disclosure under sections 552.103 and 552.108 of the Government Code.¹

We conclude that the county may withhold the withdrawn warrant information from disclosure under section 552.103(a). To secure the protection of section 552.103(a), a governmental body must demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated and that the requested information relates to that judicial or quasi-judicial proceeding. Open Records Decision No. 555 (1990) at 2.

¹In addition to the withdrawn warrant information, you have submitted to us for review information relating to a warrant dated January 23, 1994. This information clearly does not fall within the ambit of the request. Accordingly, we need not address the availability of this information under the Open Records Act at this time.

In this instance you have made the required showing that the withdrawn warrant information relates to pending litigation for purposes of section 552.103(a). Specifically, we understand that an action has been brought against the county under the Tort Claims Act for injuries and damages sustained as the result of false arrest and defamation. The information at issue here clearly relates to this action. Because you may withhold the withdrawn warrant information under section 552.103(a) of the Government Code, we need not address the applicability of section 552.108 at this time.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Ref.: ID# 30018

Enclosures: Submitted records

cc: Mr. David A. Sheppard
Attorney at Law
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(w/o enclosures)

²In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).